## SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986

(Cal. Health & Safety Code § 25249.5, et seq.) ("Proposition 65")

## April 14, 2014

Joseph C. Magnacca, President, or Current President/CEO RadioShack Corporation 300 RadioShack Cir. Fort Worth, TX 76102

Joseph C. Magnacca, President, or Current President/CEO TSR Quality, Inc. 300 RadioShack Cir. Fort Worth, TX 76102 RadioShack Plaza La Cienega #101 1837 La Cienega Blvd. Los Angeles, CA 90035-4654

RadioShack de Mexico, S.A. de C.V. AV. Avenue Jardin No. 245 Colonia Tlatilco, DF 02860 Mexico

TX 1900 One Tandy Center 76102 Fort Worth United States

**Tandy Electronics** 

RadioShack Culver Shopping Center 3865 Overland Avenue, Culver City, CA 90323-3306

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING THE ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 concerning the Hand Tools containing Di (2-ethylhexyl) phthalate (DEHP)

To whom this may concern:

Consumer Advocacy Group, Inc. ("CAG"), the noticing entity, located at 9903 Santa Monica Boulevard #225, Beverly Hills, California 90212, serves this Notice of Violation ("Notice") on RadioShack Corporation, TSR Quality, Inc., RadioShack de Mexico, RadioShack Culver Shopping Center, and RadioShack Plaza La Cienega (collectively "Violators") pursuant to and in compliance with Proposition 65. Violator may contact CAG concerning this Notice through its designated person within the entity, its attorney, Reuben Yeroushalmi, Esq., 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212, telephone no. (310) 623-1926, facsimile no. (310) 623-1930. This Notice satisfies a prerequisite for CAG to commence an action against Violator in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached distribution list. CAG is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

- CAG is an organization based in California. By sending this Notice, CAG is acting "in the public interest" pursuant to Proposition 65. CAG is an entity dedicated to protecting the environment, improving human health, and supporting environmentally sound practices.
- This Notice concerns violations of the warning prong of Proposition 65, which states that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical

known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual . . ." Cal. Health & Safety Code § 25249.6.

- Hand Tools contain Di (2-ethylhexyl) phthalate (DEHP), also known as Diethyl Hexyl Phthalate. CAG has discovered Hand Tools specifically Adjustable Wire Strippers/Cutters containing DEHP. DEHP is a chemical known to the State of California to cause both cancer and reproductive toxicity, developmental male. On January 1, 1988, the Governor of California added DEHP to the list of chemicals known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP to the list of chemicals known to the State to cause developmental male reproductive toxicity. Both additions took place more than twenty (20) months before CAG served this Notice.
  - o An exemplar of the violations caused by **Adjustable Wire Strippers/Cutters** includes but is not limited to:

RadioShack® "Adjustable Wire Stripper/Cutter", "6400223", "12A13", "UPC: 0 40293 98533 2"

- O An exemplar of the violations caused by Crimping Tools includes but is not limited to:

  RadioShack® "4-Way CRIMPING TOOL", "ITEM NO.: 6400225", "10A13",

  "UPC: 0 40293 98527 1"
- This Notice addresses consumer products exposures. A "[c]onsumer products exposure' is an exposure which results from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service." Cal. Code Regs. 27 § 25602(b).

Violator caused consumer product exposures in violation of Proposition 65 by producing or making available for distribution or sale in California to consumers Crimping Tools and Adjustable Wire Strippers/Cutters. The packaging for Crimping Tools and Adjustable Wire Stripper/Cutter (meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) contains no Proposition 65-compliant warning. Nor did Violator, with regard to Crimping Tools and Adjustable Wire Strippers/Cutters, provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided clear and reasonable warnings. Nor did Violator, with regard Crimping Tools and Adjustable Wire Strippers/Cutters, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, menus, or a combination thereof.

• This Notice also concerns occupational exposures. An "[o]ccupational exposure' means an exposure to any employee in his or her employer's workplace." *Cal. Code Regs.* tit. 27, § 25602(f).

Violator, RadioShack Culver Shopping Center, caused occupational exposures, to their respective products, in violation of Proposition 65 by allowing employees to handle the Crimping Tools and Adjustable Wire Strippers/Cutters in the course of packaging, shipping, distributing, promoting, and selling the Crimping Tools and Adjustable Wire Strippers/Cutters without having first given clear and reasonable warnings to such employees that, by handling the Crimping Tools and Adjustable Wire Strippers/Cutters, such employees would suffer exposures to DEHP. Violator's employees were exposed to Crimping Tools and Adjustable Wire Strippers/Cutters by touching the Crimping Tools and Adjustable Wire Strippers/Cutters with their bare skin at Violator's premises located at RadioShack Culver Shopping Center, 3865 Overland Avenue, Culver City, CA 90323-3306, among other locations where these activities take place including but not limited to other distributing, shipping, warehousing, packaging and retail

centers. Violator did not provide any Proposition 65-compliant warnings on any of the products or any substance present or any sign or system of signs within the workplace.

This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997.

This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to (a) the conduct of manufacturers occurring outside the State of California; and (b) employers with less than ten (10) employees. The approval also provides that an employer may use any means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement be subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the California Attorney General.

These violations occurred each day between April 14, 2011, and April 14, 2014, and are ever continuing thereafter.

The principal routes of exposure were through dermal contact, ingestion, and inhalation. Persons sustain exposures by handling Crimping Tools and Adjustable Wire Stripper/Cutter without wearing gloves or by touching bare skin or mucous membranes with gloves after handling Crimping Tools and Adjustable Wire Stripper/Cutter as well as direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate matter emanating from Crimping Tools and Adjustable Wire Stripper/Cutter.

Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. Cal. Health & Safety Code § 25249.7(d)(1). With this letter, CAG gives notice of the alleged violations to Violators and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice (plus ten (10) calendar days because the place of address is beyond the State of California but within the United States), CAG may file suit. See Cal. Health & Safety Code § 25249.7(d)(1); Cal. Code Regs. 27 § 25903(d)(1); and Cal. Code Civ. Proc. § 1013. CAG remains open and willing to discussing the possibility of resolving its grievances short of formal litigation.

With the copy of this notice submitted to the Violator, a copy of the following is attached: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.

Dated: April 19/19

Reuben Yeroushalmi-

Yeroushalmi & Associates

Attorneys for Consumer Advocacy Group, Inc.

#### APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENTCALIFORNIA ENVIRONMENTAL PROTECTION AGENCY THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSONIDENTIFIED ON THE NOTICE.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute is available online at: http://oehha.ca.gov/prop65/law/P65law72003.htm l. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001. These implementing regulations are available online at:

http://oehha.ca.gov/prop65/law/P65Regs.html.

## WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. This means that chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at:

http://www.oehha.ca.gov/prop65/prop65\_list/New list.html.

Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies; for example, when exposures are sufficiently low (see below). The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: http://www.oehha.ca.gov/prop65/law/index.html

## Prohibition from discharges into drinking water.

A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

## DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (http://www.oehha.ca.gov/prop65/law/index.html) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes placeless than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement.

See OEHHA's website at:

http://www.oehha.ca.gov/prop65/getNSRLs.html for a list of NSRLs, and Section 25701 et seq. of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by a 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at:

http://www.oehha.ca.gov/prop65/getNSRLs.html for a list of MADLs, and Section 25801 et seq. of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in a Food. Certain exposures to chemicals that occur in foods naturally (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant <sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause

<sup>&</sup>lt;sup>2</sup> See Section 25501(a)(4)

cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

#### **HOW IS PROPOSITION 65 ENFORCED?**

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of the regulations and in Title 11, sections 3100-3103. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice. A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...
Contact the Office of Environmental Health Hazard Assessment's Proposition 65

Implementation Office at (916) 445-6900 or via email at <u>P65Public.Comments@oehha.ca.gov</u>.

Revised: July, 2012

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

#### CERTIFICATE OF MERIT

Re: Violations of Proposition 65 concerning Hand Tools containing DEHP

Pursuant to Health and Safety Code Section 25249.7(d)

## I, Reuben Yeroushalmi, hereby declare:

- 1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
- 2. I am the attorney for the noticing party.
- 3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action.
- 4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
- 5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: 4//1//1

By: Reuben Yeroushalmi

### **CERTIFICATE OF SERVICE**

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212.

## ON THE DATE SHOWN BELOW, I SERVED THE FOLLOWING:

- 1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the certificate of merit (only sent to Attorney General)
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

by enclosing copies of the same in a sealed envelope, along with an unsigned copy of this declaration, addressed to each person shown below and depositing the envelope in the U.S. mail with the postage fully prepaid. Place of Mailing: Beverly Hills, CA

Name and address of each party to whom documents were mailed:

Joseph C. Magnacca, President,
or
Current President/CEO
RadioShack Corporation
300 RadioShack Cir.
Fort Worth, TX 76102

Joseph C. Magnacca,
President, or Current
President/CEO
TSR Quality, Inc.
300 RadioShack Cir.
Fort Worth, TX 76102

RadioShack
Plaza La Cienega #101
1837 La Cienega Blvd.
Los Angeles, CA 90035-
4654

RadioShack de Mexico, S.A. de				
C.V. AV.				
Avenue Jardin No. 245				
Colonia Tlatilco, DF 02860				
Mexico				

Tandy Electronics TX 1900 One Tandy Center 76102 Fort Worth United States RadioShack Culver Shopping Center 3865 Overland Avenue, Culver City, CA 90323-3306

Name and address of each public prosecutor to whom documents were mailed:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date of Mailing: 04-17-2014

By:

Hya Gingoyon

# Distribution List

1225 Fallon St, Room 90	TAlamada Country District Attornoy	Los Angeles County District Attorney	Mono County District Attorney
Oakland, CA. 94612			
Aprine County District Attorney   Stockton, CA 95201   0.9990   Stockton, CA 9500   Stockton, CA 95201   0.9990   Stockton, CA 95201   0.9990   Stockton, CA 95201   0.9990   Stockton, CA 95201   0.9990   Stockton, CA 9500   Stockton,	1		
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Amador County District Attorney   P.O. Box 730   San Francisco County District Attorney   P.O. Box 730   San Francisco County District Attorney   25 County Center Dr. Oroville, CA. 9596-1385   San Francisco, CA. 94103   San Demardino, County District Attorney   San Penardino, County District Attorney   San Penardino, County District Attorney   San Penardino, Ca. 92415-0004   San Penardino, County District Attorney   San Penardino, Ca. 92415-0004   San Pen		209 W Yosemite Ave	
P.O. Box 730	Markleeville, CA 96120	Madera, CA 93637	
Jackson, CA. 95642 Butte County District Attorney 25 County Center Dr. Oroville, CA. 9596-3385 San Ranke, CA. 9403 San Benactives, San Diego County District Attorney 25 County Center Dr. Oroville, CA. 9596-3385 San Rake, CA. 9403 San Benactives, San Diego, CA. 92101-3803 San Rake, CA. 9403 San Demarks County District Attorney 81 Mountain Ranch Road P.O. Box 1000 Ukiah, CA. 95482 San Benardino, CA. 92415-0004 San Andreas, CA. 95249 Ukiah, CA. 95482 San Benardino, CA. 92415-0004 San Andreas, CA. 95249 Ukiah, CA. 95482 San Benardino, CA. 92415-0004 San Prancisco, CA. 92416		1	
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PO Box 808   S50 W. 20th Street   Martinez, CA 94553   Santa Ana, CA 92702   Merced, CA 95340   Merced, CA 95340   Merced, CA 95340   Merced, CA 95351   Nevada City, CA 95959-2504   Napa, County District Attorney 201 Church St, Suite 8   PO Box 720   Napa, CA 94559-0720   Napa, CA 94559   Napa, CA 9459-0720   Napa, CA 94501		Orange County District Attorney	
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2 S Green St County Civic Center, Rm 224 310 Second St Visalia, CA 93291 Woodland, CA 95695  Ventura County District Attorney 800 S Victoria Ave P.O. Box 519 San Jose City Attorney 151 W. Mission St.			
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800 S Victoria Ave P.O. Box 519 151 W. Mission St.			
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